



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Holcomb et al.	Examiner:	Gregory J. Strimbu
Serial No.:	09/815,376	Group Art Unit:	3634
Filed:	March 21, 2001		
For:	COMBINATION DIFFERENTIAL AND ABSOLUTE PRESSURE TRANSDUCER FOR LOAD LOCK CONTROL	Docket No.	16458-050 (MKS1.50USU1)

Mail Stop Petitions
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

ATTN: Frances Hicks
Office of Petitions

PETITION UNDER 37 CFR 1.183 TO SUSPEND 37 CFR 1.78(a)(6) TO THE
EXTENT IT MAY BE CONSTRUED TO ALLOW SUBMISSION OF THE
REFERENCE REQUIRED BY PARAGRAPH (a)(5) TO BE ACCEPTED ONLY
"DURING THE PENDENCY OF THE LATER FILED APPLICATION" IN ORDER
TO ACCEPT POST ISSUANCE AN UNINTENTIONALLY DELAYED
SUPPLEMENTAL APPLICATION DATA SHEET SHOWING THE SPECIFIC
REFERENCE TO PROVISIONAL APPLICATION UNDER 35 USC 119(e), WHERE
THE PRIORITY CLAIM IS ALREADY CONTAINED IN THE APPLICATION IN A
MANNER THAT MEETS THE REQUIREMENTS OF 35 USC 119(e), AND
WITHOUT REQUIRING A PETITION UNDER 37 CFR 1.78(a) AND SURCHARGE
UNDER 37 CFR 1.17(t)

OR, ALTERNATIVELY,

PETITION UNDER 37 CFR 1.78(a)(3) TO ACCEPT UNINTENTIONALLY
DELAYED CLAIM FOR THE BENEFIT OF A PRIOR-FILED APPLICATION
UNDER 35 USC 120

Adjustment date: 12/10/2007 CKHLOK
03/06/2007 WABDELRI 00000008 501491 09815376
01 FC:1462 400.00 CR

These petitions are made in the alternative because of the particular facts involved:

A.) In the first Office Action, the Examiner in this application explicitly acknowledged the applicant's claim for domestic priority under 35 U.S.C. § 119(e) to a provisional application. (See Exhibit J).

02/10/2007 CKHLOK 00000032 501491 09815376

01 FC:1811 100.00 DA

03/06/2007 WABDELRI 00000008 501491 09815376

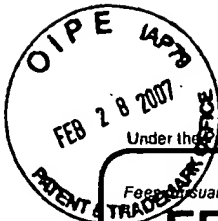
01 FC:1462 400.00 DA

letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS.” [emphasis added]

10. If the Examiner had included the Form 2.15 or 2.16 notice according to M.P.E.P. 201.11 III. E. in the first or any subsequent Office action, the applicants would surely have responded with an amendment in the first line of the specification or with a Supplemental Application Data Sheet to comply with 37 CFR 1.78(a). However, the rule requiring the specific reference to be in the application data sheet or in the first sentence of the specification after the title went into effect less than four months before this application was filed and applicant’s attorney was unaware of it at the time, so, with the Examiner’s explicit acknowledgment of the domestic priority claim in the first Office action, as explained in paragraph 8 above, and because of his failure to include the form paragraph 2.15 or 2.16 according to M.P.E.P. 201.11 III. E. in the first or any subsequent Office action to call the applicant’s attention to the requirement for inclusion of the reference to the prior application in the specification or in an application data sheet, applicants believed the priority claim to the provisional application had been perfected and no further attention was given to this issue by either the Examiner or the applicants during the remaining prosecution of this patent application, and it issued as United States Patent No. U.S. 7,076,920 on July 18, 2006.

11. In January 2007, the applicants’ attorney noticed that the front page (page 1) of the issued patent did not have the Related U.S. Application Data with a reference to the prior-filed application, as was included on the first page of the published patent application (see paragraph 6 above). Further investigation then revealed that references to the prior-filed application were included in the Transmittal Letter (Exhibit C) and in the Declaration for Patent Application (Exhibit E), but not in the specification or in an application data sheet. Further legal research and study, including numerous calls to the Patent Office, including the Examiner, the Office of Legal Administration, and the Petitions Office lead to the preparation and filing of these petitions.

M.) The statutes U.S.C. §§ 119(e) and 120, both provide that the Director may establish procedures, including the payment of a surcharge, to accept unintentionally delayed submission of an amendment under that subsection or section. The provision in M.P.E.P. 201.11 III. E. that examiners should notify the applicant of the rule requirement for the reference if missing and to do so with the wording of form paragraphs 2.15 or 2.16 is a part of such procedures established by the Director toward that end. The failure of the Patent Office to follow those M.P.E.P. 201.11 III. E. procedures in this case contributed to the specific reference for the priority claim not getting placed on one of the specific documents required by the Director’s rule in 37 CFR 1.78(a), and it probably also contributed to the applicant’s domestic priority claim not getting printed on the first sheet of the issued patent, as it should have been, after it was specifically acknowledged by the Examiner as being contained in the application.



3-2-07

DAC

PTO/SB/17 (02-07)

Approved for use through 02/28/2007, OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**
For FY 2007☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 400.00

Complete if Known

Application Number	09/815,376
Filing Date	March 21, 2001
First Named Inventor	Garry Holcomb
Examiner Name	Gregory J. Strimbu
Art Unit	3634
Attorney Docket No.	16458-050 (MKSI.50USU1)

METHOD OF PAYMENT (check all that apply)

- ☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____
- ☒ Deposit Account Deposit Account Number: 501491 Deposit Account Name: Cochran Freund & Young
- For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)
- ☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
- ☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fees Paid (\$)
- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____				

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Petition fee required under 37 CFR 1.17(f)

Fees Paid (\$)

400.00

SUBMITTED BY

Signature

Registration No. 27,847
(Attorney/Agent)

Telephone 970-492-1100

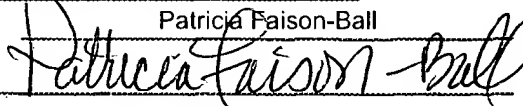

Name (Print/Type) James R. Young

Date 2/28/07

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND												
1 Date of Request: <u>10/24/07</u>		2 Serial/Patent # <u>09/815,376</u>										
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT								
	Filing			\$								
	Amendment			\$								
	Extension of Time			\$								
	Notice of Appeal/Appeal			\$								
X	Petition	IFW	02/28/07	\$ 400.00								
	Issue			\$								
	Cert of Correction/Terminal Disc.			\$								
	Maintenance			\$								
	Assignment			\$								
	Other			\$								
		7 TOTAL AMOUNT OF REFUND		\$ 400.00								
		8 TO BE REFUNDED BY:										
		Treasury Check										
		X	Credit Deposit A/C #:									
			9 <table border="1" style="display: inline-table; text-align: center;"> <tr> <td>5</td><td>0</td><td>--</td><td>1</td><td>4</td><td>9</td><td>1</td> </tr> </table>			5	0	--	1	4	9	1
5	0	--	1	4	9	1						
10 REASON:												
	Overpayment											
	Duplicate Payment											
X	No Fee Due (Explanation):											
Petition under 37 CFR 1.183 Dismissed as involving moot issues.												
11 REFUND REQUESTED BY:												
TYPED/PRINTED NAME:		Patricia Faison-Ball		TITLE: Attorney								
SIGNATURE:				PHONE: 2-3212								
OFFICE:		PETITIONS										
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****												
APPROVED:				DATE: <u>12/10/07</u>								

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1462